Filed 10/7/10 In re A.C. CA1/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

In re A.C., a Person Coming Under the Juvenile Court Law.	
SAN MATEO COUNTY DEPARTMENT OF SOCIAL SERVICES, Plaintiff and Respondent, v. F.V., Defendant and Appellant.	A128021 (San Mateo County Super. Ct. No. 79320)

F.V. appeals from the orders at the six-month review in the dependency proceeding for his daughter, arguing that the court erred in finding that he had received reasonable reunification services. We disagree and affirm.

I. BACKGROUND

A dependency petition was filed on March 18, 2009 for three-year-old A.C. alleging failure to protect and support. (Welf. & Inst. Code, § 300, subds. (b) & (g).) The petition stated that A.C.'s mother had neglected A.C. and abandoned her to J.E.; the mother identified J.E.'s son, O.W., as A.C.'s biological father. A.C. was detained in J.E.'s care, and O.W. was ordered to submit to a paternity test.

The petition was sustained at the jurisdictional hearing on April 8, 2009, and A.C. was placed in a foster home on April 10, 2009. After the jurisdictional hearing,

respondent San Mateo County Human Services Agency (Agency) obtained a copy of A.C.'s birth certificate, which listed A.J.C. as A.C.'s father. An April 30, 2009 addendum to the dispositional report stated that the mother had advised that O.W. was not the child's father, and that the father could be A.J.C., or appellant F.V.

At the dispositional hearing on May 18, 2009, A.C. was declared a dependent child, she was continued in foster care, and a six-month review hearing was scheduled for October 7, 2009. A.J.C. and F.V. were ordered to undergo paternity testing, and an interim review hearing on the paternity issue was set for July 8, 2009. Paternity testing before the July 8 hearing indicated that F.V. was the biological father.

When the case social worker spoke with F.V. on July 3, 2009, F.V. advised that he "was unable to provide supervision, care and support for this child as he is currently trying to establish a stable life for himself." F.V. said "that he is not currently employed, 'just going to school, don't stay with parents and in a pretty bad situation.' " At the July 8 hearing, counsel appointed for F.V. asked that the case "be put over for a few weeks so the department can meet with my client and ascertain what reunification services would be useful to him." A.C. was placed with her maternal grandfather on July 10, 2009.

Psychologist Leslie Packer prepared a psychological evaluation of A.C. in September 2009, addressing among other things the potential effect of visitation with F.V. Packer opined that such visits "might not be appropriate at the present time [because A.C.] needs to be given a clear and consistent message in regard to who will be taking care of her, and where her security lies. The disadvantages of introducing visits with an adult whom she is not familiar with, her biological father, are not outweighed by the benefits of having this person in her life at this time. . . . [¶] . . . [I]t is advised that she still needs time to establish roots and security in her placement with her grandfather, before being subject to potential confusion about where she is going to be living. . . . [¶] . . . [¶] . . . After [A.C.] has established a secure base, and can be given reassurance that she will be staying with Grandpa 'forever and ever,' it could be to her benefit to have contact with her biological father."

When the six-month review hearing commenced on October 7, 2009, mother's counsel asked that the case be continued for a contest on the issue of visitation. F.V.'s counsel asked for supervised visits and reunification services, and the hearing was continued to October 26, 2009.

In an October 22, 2009 addendum to the six-month hearing report, the Agency opined that it was "not in the best interest of the child to engage in reunification services including supervised visitation with the father [F.V.] at this time." In support of that opinion, the report noted that F.V. did not have a relationship with A.C., had acknowledged his inability to care for A.C., and was "not entitled to services as his parentage type has not been elevated to presumed father status." The report also cited Packer's opinion that visitation with F.V. would not be in A.C.'s best interest. The report stated that F.V. "ha[d] begun working on his life," had completed probation, was attending school full time, and was working after school in a family-owned coffee shop in return for tuition payments.

At the continued hearing on October 26, 2009, Agency counsel stated that the Agency would stipulate that F.V. was the presumed father once he signed a declaration of paternity. Case worker Olisha Hodges testified at the hearing and reiterated the opinion in her report that visits with F.V. were not in A.C.'s best interest at that point. She said that the decision to allow visitation would be made in consultation with A.C.'s therapist and grandfather, and estimated that A.C. would need a minimum of three months "to stabilize and get more familiar with the current people who are in her life" before being introduced to F.V. Packer, likewise, testified that A.C. might be able to achieve the stability required for visits with F.V. by her birthday in mid-January. Packer did not believe that A.C. should be introduced to F.V. until the Agency was "pretty sure that he's a potential candidate for long-term care and he's gone through a psych eval and substance eval, and there's some certainty that this is a guy who can offer this child a future."

When the mother asked that the hearing be continued, F.V.'s counsel objected that "time is of the essence for my client," but ultimately agreed to a continuance to November 17, 2009. The court confirmed with F.V. that he wanted to be the presumed

father, and declared him the presumed father subject to submission of a declaration of paternity.

At the November 17 hearing, the matter was continued with F.V.'s counsel's agreement to January 7, 2010. The agency advised that it would undertake a social study of F.V. to determine which services, if any, would be appropriate for him.

On December 4, 2009, F.V. filed a motion for hearing on January 7, 2010 to be declared A.C.'s presumed father and to obtain "a reunification plan and visitation forthwith." F.V. signed a declaration in support of the motion on December 2, 2009, stating: "My goal is to have custody of my daughter. I currently am attending college and reside in a roommate situation. I am engaged and my girlfriend knows of [A.C.] and that she is my daughter. I realize that [A.C.] does not know who I am and presently has no relationship with me. I am willing to cooperate with her therapist in establishing a relationship so that she can make a healthy and positive transition into my custody. I am therefore, requesting reunification services and visitation. I want what is best for my daughter."

The Agency's social study of F.V. was included in a January 5, 2010 addendum to the six-month hearing report. The social worker reported that she interviewed F.V. on December 3 and 17, 2009, and that F.V. told her, " 'right now, I only want visits not custody.' He pointed out, 'I don't want her to feel abandoned and I'm unsure about custody . . . I don't have a timeframe.' [F.V.] indicated that 'maybe 3 or 4 years . . . after school and after I find a job' he will be interested in obtaining custody of the child as he declares, 'I do not have a stable living environment, I'm balancing school . . . I can't take care of her I'm barely able to take care of myself. I live in a cramped 3 bedroom with 4 other people' and is currently sharing a bedroom with his cousin." The social worker believed that F.V.'s "partial and future 3 to 4 year plan" for custody was inadequate to meet A.C.'s current needs. "Therefore the [report] recommend[ed] that the Court find that reunification services for this father do not provide a current benefit. However . . . this father does not pose an immediate threat to this child and therefore should be considered for supervised visitation."

At the January 7 hearing, the court granted F.V.'s motion for presumed father status, and his request for reunification services, including visitation with A.C. The court ordered "those services ratcheted up, the case plan, in a week." The six-month review was continued again, to February 24, 2010.

It is not disputed that reasonable services were provided to F.V. after the January 7 hearing. To quote from F.V.'s opening brief on appeal: "To her credit the supervising social worker immediately met with appellant provided him referrals, arranged meetings with the child's therapist, and worked to arrange for appellant to attend parenting classes in Alameda [where F.V. was living] rather than San Mateo County. . . . These efforts were laudable." F.V. agreed to a case plan for his reunification with A.C., which the court approved on February 5, 2010.

The six-month review hearing was finally concluded on February 24, 2010. The court found that F.V. had received reasonable services, rejecting his argument that the services were unreasonable because they were only furnished for little more than a month.

II. DISCUSSION

Findings that reasonable reunification services have been provided are reviewed for substantial evidence. (*Amanda H. v. Superior Court* (2008) 166 Cal.App.4th 1340, 1345−1346.) We conclude that substantial evidence supported the finding here, and thus do not reach the issue of prejudice.

F.V. argues that the finding is insupportable because he received only five weeks of services before the six-month review was concluded. However, the record contains evidence that justified the agency's failure to provide services any earlier than it did.

We note first that services were furnished as soon as F.V. became the presumed father. In general, only a presumed, not just biological, father is entitled to reunification services. (*In re Marcos G.* (2010) 182 Cal.App.4th 369, 383; *In re Emily R.* (2000) 80 Cal.App.4th 1344, 1354.) While reunification services may be ordered for a biological father in certain circumstances (Welf. & Inst. Code, § 361.5, subd. (a)), such services are

not necessarily warranted if he "has never had any kind of substantial familial relationship to the child" (*In re Sarah C.* (1992) 8 Cal.App.4th 964, 975).

Services could have been withheld even if F.V. had been the presumed father throughout the period in question. Although F.V.'s counsel was asking as early as the October 7, 2009 hearing that F.V. receive services, and F.V. executed a declaration on December 2, 2009 stating that his goal was to obtain custody of A.C., F.V. later told the social worker that he was "unsure about custody," and that he would " 'maybe . . . be interested in obtaining custody" in three or four years after finishing school and getting a job. Those admissions supported the agency's recommendation against any services other than supervised visitation. "In light of the juvenile dependency system's limited resources, it is rational to provide reunification services for those who want to reunify, and not to spend time and effort on the off chance a parent might want to assume custody at some indefinite future time." (*In re Terry H.* (1994) 27 Cal.App.4th 1847, 1855.) While the court decided, notwithstanding those admissions, to order services beyond visitation, it did not lack evidence for a contrary ruling.

As for visitation, the services to F.V. began in mid-January 2010, around the time when, according to psychologist Packer and case worker Hodges, A.C. might be secure enough to meet her father. The court could credit Packer's and Hodge's opinions that visitation before that time would have been detrimental to A.C. (Welf. & Inst. Code, § 362.1, subd. (a)(1)(A) [visitation must be "consistent with the well-being of the child"].)

III. CONCLUSION

The findings and orders at the six-month review are affirmed.

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Marchiano, P.J.

We concur:

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Margulies, J.

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Banke, J.